

OFFICE OF THE STATE ARCHITECT
STATE BUILDINGS PROGRAMS
POLICIES AND PROCEDURES

5/025/13/13

ELIGIBILITY REQUIREMENTS FOR REQUESTING
CONTROLLED MAINTENANCE FUNDING

Pursuant to C.R.S. 24-30-1301-Definitions

(2)(a) "Controlled maintenance" means:

(I) Corrective repairs or replacement used for **existing state-owned, general-funded buildings and other physical facilities**, including, but not limited to, utilities and site improvements, which are suitable for retention and use for at least five years, and replacement and repair of the fixed equipment necessary for the operation of such facilities, when such work is not funded in an agency's operating budget to be accomplished by the agency's physical plant staff;

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(II) That controlled maintenance funds may not be used for:

(A) Corrective repairs or replacement for buildings and other physical facilities and replacement or repair of the fixed and movable equipment necessary for the operation of physical facilities, when such work is funded in an agency's operating budget to be accomplished by the agency's physical plant staff; for the repair and replacement of fixed and movable equipment necessary for the conduct of programs (such repair and replacement is funded as capital outlay); or for rented or leased facilities or facilities constructed and maintained by self-liquidating property funds. Minor maintenance items shall not be accumulated to create a controlled maintenance project, nor shall minor maintenance work be accomplished as a part of a controlled maintenance project unless the work is directly related.

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(B) Any work properly categorized as capital construction or capital outlay.

(b) "Controlled maintenance" may include the purchase of the services of architects, engineers, and other consultants to investigate conditions and prepare recommendations for the correction thereof, to prepare plans and specifications, and to supervise the execution of such controlled maintenance projects as provided by appropriation by the general assembly.

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MINIMUM FIFTEEN YEAR ELIGIBILITY REQUIREMENT

1. New Construction/Renovation/Corrective Repair and Replacement:

- a) New state-owned, general-funded buildings and other physical facilities funded through capital construction appropriations in ~~FY 02/03 and thereafter~~ and academic facilities (as defined herein) will be eligible for future controlled maintenance funds when a minimum of fifteen years has elapsed from the date of substantial completion of the original capital construction project.
- b) New additions to existing state-owned, general-funded buildings and other physical facilities funded through capital construction appropriations in ~~FY 02/03 and thereafter~~ and academic facilities (as defined herein) will be eligible for future controlled maintenance funds (for any portion of the new addition) when a minimum of fifteen years has elapsed from the date of substantial completion of the original capital construction (addition) project.
- c) Partial or total renovations of existing state-owned, general-funded buildings and other physical facilities funded through capital construction appropriations in ~~FY 02/03 and thereafter~~ and academic facilities (as defined herein) will be eligible for future controlled maintenance funds

utility infrastructure that is central to the role and mission of each institution as set forth in 23-1-106, whether general-funded or funded through other means (not involving capital construction appropriations). Examples include, but are not limited to, classrooms, libraries, and administrative facilities.

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b) "Auxiliary Facility" means any building or other physical facility, including any supporting utility infrastructure, funded from an auxiliary source such as housing or parking revenue or any building or other physical facility that has been historically managed as an auxiliary facility and is accounted for in institutional financial statements as self-supporting facility. Examples include, but are not limited to housing facilities, dining facilities, recreational facilities, and student activities facilities.

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Guidelines for Determining Classifications (per 2009 MOU between CDC and Higher Education)

a) Fund source

- If a project/facility is funded from appropriated academic and academic facility fee or from tuition then it is typically considered an academic project/facility.
- If a project/facility is funded from auxiliary source such as housing or parking revenue, then it is typically not considered an academic project and is instead an auxiliary project/facility.

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ELIGIBILITY WAIVER PROCESS

1. Agency/institutions with state-owned, general funded buildings and other physical facilities and academic facilities (as defined herein) that may require special consideration for waiver on eligibility requirements shall submit in writing a justification to the Director of State Buildings and Real Estate Programs (SBREP) Office of the State Architect (OSA).

a) Upon receipt of agency/institutions written justification SBREP_OSA will review and consult with the Capital Development Committee for approval or denial.

b) A written determination from SBREP_OSA will then be sent to the agency/institution explaining the reasons for approval or denial. If approval is granted, the agency/institution will be eligible to request controlled maintenance funds in the subsequent fiscal year.

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NOTE: The governor signed this measure on 4/16/2012.

An Act

SENATE BILL 12-040

BY SENATOR(S) Bacon, Harvey, Renfroe, Schwartz, Boyd, Heath, Newell, Williams S.;
also REPRESENTATIVE(S) Vigil, Brown, Sonnenberg, Fields, Fischer, Hamner, Labuda, Pabon, Pace, Schafer S., Todd.

CONCERNING THE QUALIFICATION OF CERTAIN STATE HIGHER EDUCATION
FACILITIES FOR STATE CONTROLLED MAINTENANCE FUNDING.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 23-1-102, **amend** (2) as follows:

23-1-102. Commission established - terms of office. (2) There is hereby established a central policy and coordinating board for higher education in the state of Colorado, to be known as the Colorado commission on higher education, referred to in this article as the "commission". The duties and powers delegated to the commission by this article shall apply to all state-supported institutions of higher education, including, but not limited to, all postsecondary institutions in the state supported in whole or part by state funds, and including junior colleges and community colleges, extension programs of the state-supported universities and colleges, local district colleges, ~~and~~ area vocational schools, THE AURARIA HIGHER

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

EDUCATION CENTER ESTABLISHED IN ARTICLE 70 OF THIS TITLE, and specifically the regents of the university of Colorado and the institutions it governs. The governing boards and institutions of the public system of higher education in Colorado, including the university of Colorado, are obligated to conform to the policies set by the commission within the authorities delegated to it in this article.

SECTION 2. In Colorado Revised Statutes, 23-1-106, **amend** (9) (a), (9) (b), (10) (a) (I), and (10) (a) (II); and **add** (10.2) and (10.3) as follows:

23-1-106. Duties and powers of the commission with respect to capital construction and long-range planning - legislative declaration - definitions. (9) (a) Except as provided in paragraph (d) of this subsection (9), a capital construction or acquisition project ~~FOR AN AUXILIARY FACILITY~~ initiated by the governing board of a state-supported institution of higher education that is contained in the most recent unified, two-year capital improvements project projection approved pursuant to subparagraph (II) of paragraph (c) of subsection (7) of this section, as the projection may be amended from time to time, and that is to be acquired or constructed and operated and maintained solely from cash funds held by the institution shall not be subject to additional review or approval by the commission, the office of state planning and budgeting, the capital development committee, or the joint budget committee.

(b) Except as provided in paragraph (d) of this subsection (9), a capital construction or acquisition project for an academic ~~building~~ FACILITY initiated by the governing board of a state-supported institution of higher education that is contained in the most recent unified, two-year capital improvements project projection approved pursuant to subparagraph (II) of paragraph (c) of subsection (7) of this section, as the projection may be amended from time to time, and that is to be acquired or constructed solely from cash funds held by the institution and operated and maintained from such funds or from state moneys appropriated for such purpose, or both, shall not be subject to additional review or approval by the commission, the office of state planning and budgeting, the capital development committee, or the joint budget committee. Any capital construction project subject to this paragraph (b) shall comply with the high performance standard certification program established pursuant to section 24-30-1305, C.R.S.

(10) (a) (I) The commission shall review and approve any plan for a capital construction or acquisition project FOR AN AUXILIARY FACILITY that is estimated to require total expenditures exceeding two million dollars and that is to be acquired or constructed and operated and maintained solely from cash funds held by the institution that, in whole or in part, are subject to the higher education revenue bond intercept program established pursuant to section 23-5-139.

(II) The commission shall review and approve any plan for a capital construction or acquisition project for an academic building FACILITY that is estimated to require total expenditures exceeding two million dollars, that is to be acquired or constructed solely from cash funds held by the institution that, in whole or in part, are subject to the higher education revenue bond intercept program established pursuant to section 23-5-139, and that is operated and maintained from such cash funds or from state moneys appropriated for such purpose, or both. Any capital construction project subject to this subparagraph (II) shall comply with the high performance standard certification program established pursuant to section 24-30-1305, C.R.S.

(10.2) (a) (I) NOTWITHSTANDING ANY LAW TO THE CONTRARY, ALL ACADEMIC FACILITIES ACQUIRED OR CONSTRUCTED, OR AN AUXILIARY FACILITY REPURPOSED FOR USE AS AN ACADEMIC FACILITY, SOLELY FROM CASH FUNDS HELD BY THE INSTITUTION AND OPERATED AND MAINTAINED FROM SUCH CASH FUNDS OR FROM STATE MONEYS APPROPRIATED FOR SUCH PURPOSE, OR BOTH, INCLUDING, BUT NOT LIMITED TO, THOSE FACILITIES DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (9) OF THIS SECTION AND SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (10) OF THIS SECTION, THAT DID NOT PREVIOUSLY QUALIFY FOR STATE CONTROLLED MAINTENANCE FUNDING WILL QUALIFY FOR STATE CONTROLLED MAINTENANCE FUNDING, SUBJECT TO FUNDING APPROVAL BY THE CAPITAL DEVELOPMENT COMMITTEE AND THE ELIGIBILITY GUIDELINES DESCRIBED IN SECTION 24-30-1303.9, C.R.S., AS ENACTED BY HOUSE BILL 12-1318, ENACTED IN 2012.

(II) FOR PURPOSES OF THIS PARAGRAPH (a), THE ELIGIBILITY FOR STATE CONTROLLED MAINTENANCE FUNDING COMMENCES ON THE DATE OF THE ACCEPTANCE OF THE CONSTRUCTION OR REPURPOSING OF THE FACILITY OR THE CLOSING DATE OF ANY ACQUISITION. THE DATE OF THE ACCEPTANCE OF CONSTRUCTION OR REPURPOSING SHALL BE DETERMINED BY THE OFFICE

OF THE STATE ARCHITECT.

(b) (I) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE CLASSIFICATION OF FACILITIES AS ACADEMIC FACILITIES OR AUXILIARY FACILITIES CAN BE DIFFICULT, AND SUCH CLASSIFICATIONS OFTEN CHANGE AS ACADEMIC NEEDS, STUDENT NEEDS, AND NEW CONSTRUCTION AND DESIGN PRACTICES EMERGE. THEREFORE, THE OFFICE OF THE STATE ARCHITECT, IN COLLABORATION WITH THE DEPARTMENT OF HIGHER EDUCATION AND THE OFFICE OF STATE PLANNING AND BUDGETING, SHALL DEVELOP GUIDELINES IN ORDER TO ASSIST SUCH CLASSIFICATION. THE GUIDELINES SHALL BE ANNUALLY REVIEWED AND APPROVED BY THE CAPITAL DEVELOPMENT COMMITTEE. THE GUIDELINES SHALL ADDRESS THE FOLLOWING TWO FACTORS THAT HAVE HISTORICALLY BEEN CONSIDERED WHEN CLASSIFYING ACADEMIC FACILITIES AND AUXILIARY FACILITIES:

(A) THE FUNDING SOURCE FOR THE FACILITY; AND

(B) THE NATURE AND USE OF THE FACILITY.

(II) THE GUIDELINES ESTABLISHED PURSUANT TO THIS PARAGRAPH (b) SHALL USE THE DEFINITIONS SET FORTH IN SUBSECTION (10.3) OF THIS SECTION.

(10.3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ACADEMIC FACILITY" MEANS ANY BUILDING OR OTHER PHYSICAL FACILITY, INCLUDING ANY SUPPORTING UTILITY INFRASTRUCTURE, THAT IS CENTRAL TO THE ROLE AND MISSION OF EACH INSTITUTION AS SET FORTH IN THIS TITLE. EXAMPLES INCLUDE, BUT ARE NOT LIMITED TO, CLASSROOMS, LIBRARIES, AND ADMINISTRATIVE BUILDINGS.

(b) "AUXILIARY FACILITY" MEANS ANY BUILDING OR OTHER PHYSICAL FACILITY, INCLUDING ANY SUPPORTING UTILITY INFRASTRUCTURE, FUNDED FROM AN AUXILIARY SOURCE SUCH AS HOUSING OR PARKING REVENUE OR ANY BUILDING OR OTHER PHYSICAL FACILITY THAT HAS BEEN HISTORICALLY MANAGED AS AN AUXILIARY FACILITY AND IS ACCOUNTED FOR IN INSTITUTIONAL FINANCIAL STATEMENTS AS A SELF-SUPPORTING FACILITY. EXAMPLES INCLUDE, BUT ARE NOT LIMITED TO, HOUSING FACILITIES, DINING FACILITIES, RECREATIONAL FACILITIES, AND STUDENT

ACTIVITIES FACILITIES.

SECTION 3. In Colorado Revised Statutes, 24-30-1301, **amend** (7) as follows:

24-30-1301. Definitions. As used in this part 13, unless the context otherwise requires:

(7) "Facility" means any public building or facility of the state but does not include highways. "FACILITY" ALSO INCLUDES AN ACADEMIC OR AUXILIARY FACILITY THAT QUALIFIES FOR CONTROLLED MAINTENANCE AS SPECIFIED IN SECTION 23-1-106 (10.2), C.R.S.

SECTION 4. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

NOTE: The governor signed this measure on 4/23/2012.

An Act

HOUSE BILL 12-1318

BY REPRESENTATIVE(S) Brown, Sonnenberg, Vigil, Coram, Gerou,
Kerr J., Looper, Nikkel, Pace, Priola;
also SENATOR(S) Schwartz, Bacon, Renfroe, Nicholson, Roberts.

CONCERNING THE DEVELOPMENT OF GUIDELINES REGARDING THE
ELIGIBILITY OF CONTROLLED MAINTENANCE FUNDING FOR STATE
FACILITIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 24-30-1303.9 as follows:

24-30-1303.9. Eligibility for state controlled maintenance funding - legislative declaration. (1) THE OFFICE OF THE STATE ARCHITECT SHALL DEVELOP GUIDELINES IN ORDER TO ESTABLISH WHEN A STATE-OWNED, GENERAL-FUNDED BUILDING OR OTHER PHYSICAL FACILITY IS ELIGIBLE FOR CONTROLLED MAINTENANCE FUNDING. THE GUIDELINES SHALL ADDRESS THE TIMING OF SUCH ELIGIBILITY WITH RESPECT TO THE DATES ON WHICH ACQUISITION, CONSTRUCTION, ADDITIONS, RENOVATIONS, OR CORRECTIVE REPAIRS OF A STATE-OWNED, GENERAL-FUNDED BUILDING OR OTHER PHYSICAL FACILITY OCCURRED.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) THE GUIDELINES SHALL BE ANNUALLY REVIEWED AND APPROVED BY THE CAPITAL DEVELOPMENT COMMITTEE.

(3) THE GUIDELINES SHALL PROVIDE FOR A WAIVER OF ELIGIBILITY REQUIREMENTS THAT A STATE AGENCY OR STATE INSTITUTION OF HIGHER EDUCATION MAY REQUEST IN WRITING. IF THE STATE ARCHITECT DETERMINES THAT SPECIAL CONSIDERATION IS APPROPRIATE, HE OR SHE SHALL SEEK APPROVAL FROM THE CAPITAL DEVELOPMENT COMMITTEE.

(4) THE GUIDELINES SHALL BE POSTED ON THE WEB SITE OF THE OFFICE OF THE STATE ARCHITECT.

(5) NOTWITHSTANDING THE ELIGIBILITY REQUIREMENTS SPECIFIED IN THIS SECTION, IF A NEED ARISES FOR EMERGENCY CONTROLLED MAINTENANCE FUNDING, THE STATE AGENCY OR STATE INSTITUTION OF HIGHER EDUCATION SHALL COMMUNICATE SUCH NEED TO THE STATE ARCHITECT IN WRITING, AND THE STATE ARCHITECT, IN HIS OR HER DISCRETION, MAY USE MONEYS IN THE EMERGENCY CONTROLLED MAINTENANCE ACCOUNT CREATED IN SECTION 24-75-302 (3.2) TO FUND SUCH EMERGENCY CONTROLLED MAINTENANCE NEED. THE STATE ARCHITECT SHALL ANNUALLY PROVIDE AN EMERGENCY CONTROLLED MAINTENANCE FUNDING STATUS REPORT TO THE CAPITAL DEVELOPMENT COMMITTEE THAT SHOWS SPENDING FOR EMERGENCY CONTROLLED MAINTENANCE PROJECTS FROM THE EMERGENCY CONTROLLED MAINTENANCE ACCOUNT.

SECTION 2. In Colorado Revised Statutes, 24-75-302, **add** (3.2) as follows:

24-75-302. Capital construction fund - capital assessment fees - calculation. (3.2) THERE IS HEREBY CREATED A SPECIAL ACCOUNT WITHIN THE CAPITAL CONSTRUCTION FUND ESTABLISHED PURSUANT TO SUBSECTION (1) OF THIS SECTION TO BE KNOWN AS THE EMERGENCY CONTROLLED MAINTENANCE ACCOUNT. THE ACCOUNT SHALL CONSIST OF ANY MONEYS APPROPRIATED TO THE ACCOUNT BY THE GENERAL ASSEMBLY. THE MONEYS IN THE ACCOUNT SHALL BE SUBJECT TO ANNUAL APPROPRIATION AND SHALL BE USED ONLY TO FUND ANY UNPLANNED AND IMMEDIATE CONTROLLED MAINTENANCE NEEDS PURSUANT TO SECTION 24-30-1303.9 (5). ALL MONEYS UNEXPENDED OR UNENCUMBERED IN ANY FISCAL YEAR SHALL REMAIN IN THE ACCOUNT.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

STATE OF COLORADO

CAPITAL DEVELOPMENT COMMITTEE

Sen. Bob Bacon, Chair
Rep. Jim Riesberg, Vice Chair
Rep. Jerry Sonnenberg
Sen. Gail Schwartz
Rep. Buffie McFadyen
Sen. Mike Kopp



DEPARTMENT OF HIGHER EDUCATION

Bill Ritter, Governor
D. Rico Munn, Executive Director

Memorandum of Understanding Between the Department of Higher Education and the Capital Development Committee

Implementation and Interpretation of SB09-290

December 1, 2009

During the 2009 regular session of the Colorado General Assembly Senate Bill 09-290 was passed which drastically changed Colorado Revised Statute with respect to higher education capital construction. SB09-290 provided additional flexibility for institutions of higher education; however the legislation had a phased implementation and several issues that may cause confusion between representatives of the Department of Higher Education (DHE), the Capital Development Committee (CDC), the Governor's Office of State Planning and Budgeting (OSPB), the Joint Budget Committee (JBC), and institutions of higher education (Institutions). This Memorandum of Understanding between the CDC and the DHE is intended to ease the implementation of SB09-290.

The Office of Legislative Legal Services (OLLS) has interpreted SB09-290 to say that certain provisions became effective at the start of the fiscal year on July 1, 2009, while the remainder does not take full effect until January 1, 2010. OLLS has stated that the intent of the legislation was to apply the changes only to new projects, which has strongly influenced the development of the items below. The cash funded projects affected by SB09-290 and that are therefore included in this Memorandum of Understanding are those that fall under the amendments to subsections 9 and 10 of C.R.S. 23-1-106. SB09-290 also changed reporting requirements for higher education capital construction, particularly in subsections 6, 7, 10.5, and 11 of C.C.S. 23-1-106.

Projects approved before January 2010 and included in prior years' Long Bills for informational purposes:

- Because of the OLLS determination that SB09-290 applies to new projects, DHE, CDC, OSPB, and the JBC may see some supplemental requests for cash funded capital projects from higher education institutions in the next few years.
- Supplemental requests: Projects approved before December 2009 are not subject to the provision in SB 09-290 that an institution may enhance a project in an amount up to 15

percent of the original estimate of cost without approval. Rather, these projects will continue to be subject to the existing review and approval process for supplemental spending authority, regardless of the percentage increase of the total cost.

- Supplemental spending authority: The record of supplemental spending authority for projects approved before January 2010 should be listed in a capital supplemental bill, and the affected Long Bill should be amended accordingly.
- For these 100% cash-funded projects, OSPB review has been delegated to DHE.

Projects approved after the passage of the 2009 Long Bill and before December 2009:

- These projects are not to be listed in the Two-Year Cash Funded Capital Improvements Program list.
- JBC staff will list these higher education cash projects in the 2010 Long Bill for informational purposes only, but after FY2009-10, higher education cash-funded capital projects will no longer be listed in the Long Bill.
- DHE will report spending for these projects in an annual expenditures report (see *Reporting* below).
- For these 100% cash-funded projects, OSPB review has been delegated to DHE.

Projects approved under new rules in December 2009:

- It is the mutual understanding of the CDC and DHE that projects included on the *Two-Year Cash Funded Capital Program list* may commence immediately following:
 - CCHE approval on *Two-Year Cash Funded Capital Program list* in December.
 - CDC approval on *Two-Year Cash Funded Capital Program list* in December.
 - DHE and CDC approval of program plan and budget documents, and notification to JBC and Institution of said approval (for Intercept projects only).
- Projects being reviewed and approved at this time have specifically requested and received review under the new rules as provided by SB09-290.
- The intent of this clause is to permit maximum flexibility for Institutions to proceed to bond market or sign contracts in December 2009 while still being under the amended statutory provisions from SB09-290.

Approval of "Two-Year Cash Funded Capital Program list":

- C.R.S. 23-1-106 (6)(b) and (7)(c)(I)
- This list will only include projects that have not received prior approval from DHE and CDC. It will not include projects approved prior to December 2009 under the rules prior to the full implementation of SB09-290. In future years, the list will not include projects that are underway.
- This list will not include any projects or cash contributions listed on the *Five-Year State Funded Capital Program list*.

- If a project is subject to the Higher Education Revenue Bond Intercept Program (Intercept program), it will be reviewed and approved by DHE. The inclusion of a project on the *Two-Year Cash Funded Capital Program list* does not indicate that a project subject to the Intercept program has received DHE program plan approval unless specifically stated. DHE staff will notify the CDC upon approval of any program plan.
- After the Colorado Commission on Higher Education (CCHE) considers the *Two-Year Cash Funded Capital Program list*, DHE staff will send a letter to the CDC notifying it of the list's approval and copy staff from the higher education institution, OSPB, and the JBC.
- The CDC shall conduct a hearing on the projections. OSPB and DHE shall provide comments on each projection to the CDC. The comments may be provided in writing prior to the hearing, or may occur during the CDC hearing on the projection. It is the practice of the CDC to listen to scheduled testimony, so prior notice is requested should OSPB or DHE wish to comment on projections during a hearing.
- After the CDC considers the *Two-Year Cash Funded Capital Program list*, CDC staff will send a letter to DHE notifying it of the list's approval and copy staff from the higher education institution, OSPB, and the JBC.
- Institutions may submit an amendment to the approved *Two-Year Cash Funded Capital Program list* at any time during the fiscal year. The amendment must be submitted to the CCHE, CDC, and OSPB. The amendment will then be reviewed and considered by the CCHE and the CDC during the timeframes provided in statute. The CDC shall conduct a hearing on the amendment. OSPB and DHE shall provide comments on each amendment to the CDC. The comments may be provided in writing prior to the hearing, or may occur during the CDC hearing on the amendment. It is the practice of the CDC to listen to scheduled testimony, so prior notice is requested should OSPB or DHE wish to comment on amendments during a hearing.
- After the CCHE and the CDC consider the *Two-Year Cash Funded Capital Program list* individually, each will send notifications to the other as well as copy staff from the higher education institution, OSPB, and the JBC.
- It is the intent of DHE and the CDC that projects remain on the annual *Two-Year Cash Funded Capital Program list* until such time as the projects either commence or are abandoned. Therefore in FY2011-12 and beyond, any project included on a previously approved *Two-Year Cash Funded Capital Program list* that has not commenced by December 1 (or the designated date for DHE submission of said list to the CDC if different) must be included on the new list.

Commencing projects on "Two-Year Cash Funded Capital Program list":

- Projects subject to the Intercept program are to be included on the *Two-Year Cash Funded Capital Program list* and must receive the following approvals prior to

commencing or proceeding to bond market. The approvals may be received in any order, but all must be secured prior to commencement:

- CCHE approval on *Two-Year Cash Funded Capital Program list*.
- CDC approval on *Two-Year Cash Funded Capital Program list*.
- DHE and CDC approval of program plan and budget documents, and notification to JBC and Institution of said approval.
- Projects not subject to the Intercept program are to be included on the *Two-Year Cash Funded Capital Program list* and must receive the following approvals prior to commencing or proceeding to bond market. The approvals may be received in any order, but all must be secured prior to commencement:
 - CCHE approval on *Two-Year Cash Funded Capital Program list*.
 - CDC approval on *Two-Year Cash Funded Capital Program list*.
- Institutions may submit an amendment to the approved *Two-Year Cash Funded Capital Program list* at any time during the fiscal year. New projects added to the list through this amendment may not commence until they receive the appropriate approvals. The approvals may be received in any order, but all must be secured prior to commencement:
 - CCHE approval on *Two-Year Cash Funded Capital Program list*.
 - CDC approval on *Two-Year Cash Funded Capital Program list*.
 - DHE and CDC approval of program plan and budget documents, and notification to JBC and Institution of said approval (for Intercept projects only).
- Projects on the approved *Two-Year Cash Funded Capital Program list* are to commence no later than December 1 or they must be included on the annual list submission and seek re-approval.

Five-Year State Funded Capital Program list:

- C.R.S. 23-1-106 (6)(a) and (7)(a)
- This list will only include projects that require a Capital Construction Fund (CCF) appropriation in the annual Long Bill.
- This list will not include any projects that appear on the *Two-Year Cash Funded Capital Program list*.

Reporting:

- C.R.S. 23-1-106 (11)
- Institutions of higher education are required by September 1 to provide a list and description of each project for which an expenditure was made during the prior fiscal year to CCHE. This list is to include all projects specified by statute.
- DHE staff will compile an annual report from the institution submissions that shows all expenditures for higher education cash-funded capital projects. This report will be distributed to the CDC, JBC, OSPB, and the Office of the State Architect (OSA).

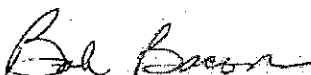
Definition of academic:

- There was no definition of academic facility included in Senate Bill 09-290.
- DHE staff will follow precedent from prior practice and statutory provisions that two factors will be considered in determining whether a facility is academic or auxiliary:
 - Fund source
 - If a project is funded from the appropriated academic and academic facility fee or from tuition then it is typically considered an academic project.
 - If a project is funded from an auxiliary source such as housing or parking revenue, then it is typically not considered an academic project and is instead an auxiliary project.
 - Nature of facility *PREDOMINANTLY*
 - If a project is central to the role and mission of the Institution, and provides space for instruction, student services, or other similar role then it is typically considered academic.
 - If it is not clear whether a proposed facility will be used for academic purposes, and it will not be funded from an auxiliary source, then the higher education institution must make a strong case for academic use in order for the proposed facility to be categorized as academic. DHE and CDC staff will also question whether a facility should be categorized as academic and may require a correction to the *Two-Year Cash Funded Capital Program list* prior to approval by CCHE or the CDC.
- Examples of auxiliary facilities include, but are not limited to: residence halls, dining halls, recreation centers, health centers/clinics, parking garages, etc.
- Examples of academic facilities include, but are not limited to: classrooms, libraries, student services, administration, etc.
- The classification of facilities as academic or auxiliary can and will be reviewed during any site visit by DHE, CDC, or OSA. In the event that a classification is suspected of being inaccurate an additional investigation will be conducted and DHE, CDC, and/or OSA may seek a change in facility classification.

Effective Date:

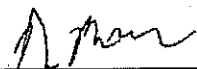
- This Agreement is effective beginning December 1, 2009.

Agreed to by the following:




Bob Bacon
Chair
Capital Development Committee

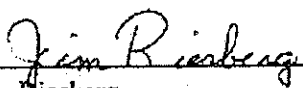
Date



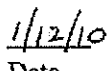
D. Rico Munn
Executive Director
Department of Higher Education



Date



Jim Riesberg
Vice-Chair
Capital Development Committee



Date